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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,277	10/24/2003	Michael Kumar	030694	2356

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EXAMINER	
POLLOCK, GREGORY A	

ART UNIT	PAPER NUMBER
4182	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/693,277	KUMAR ET AL.	
	Examiner	Art Unit	
	GREG POLLOCK	4182	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 October 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *24 October 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *11/14/2003*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This action is responsive to the claims filed 10/24/2003.

2. Claims 1-24 have been examined.

Information Disclosure Statement

3. The information disclosure statement filed 11/14/2003 has been received and placed on record in the file.

Abstract

4. The abstract of the disclosure is objected to because the language repeats information given in the title. The first sentence of the Abstract reads "Embodiments of the present invention are directed to methods related to a transaction structure for financing the sale of a commodity.". The abstract should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," and in this case "The subject invention". Correction is required. See MPEP § 608.01(b). Appropriate correction is required.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-5, and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dines et al. (U.S. Application No. 09/862992) in view of the applicant's background of invention (Kumar et al., U.S. Application No. 10/693277, "BACKGROUND OF INVENTION" section and Figure 1, labeled prior art.).

As per claim 1, Dines et al. teaches **a purchaser** (a buyer [¶19, lines 1-6] which may be a derivatives hedging products (DHP) supplier [¶4]) **entering into a purchase agreement with the first business entity** (contracts for delivery of quantities of a commodity between a buyer and producers [¶10], also see [¶35, lines 10-13], [¶39, lines 1-4], [claim 6, line 2-3], and [claim 17, lines 2-3]), **wherein the purchase agreement obligates the purchaser to purchase the volumes of the commodity from the first business entity** (quantity requirements [¶3]) **;**

and the purchaser entering into a swap agreement with a party ([¶38] and [¶39], where the purchaser now becomes a seller, or re-seller, and the "party" now is the buyer.) **, wherein the swap agreement obligates the purchaser to pay the party an amount equal to the price at which the purchaser sells the volumes of the commodity in the open market and obligates the party to pay the purchaser a fixed price** ([¶39]).

Dines et al. does not teach **an arrangement whereby a company is obligated to deliver volumes of a commodity to a first business entity pursuant to a forward contract, and whereby the first business entity offers debt securities to investors.**

The applicant's background of invention teaches **an arrangement whereby a company** (Figure 1 (Prior Art), element 10) **is obligated to deliver volumes of a commodity** ([¶3, lines 4-7] and Figure 1 (Prior Art)) **to a first business entity** (special purpose vehicle, SPV, [¶3, lines 1-7] and Figure 1 (Prior Art), element 12) **pursuant to a forward contract** (pre-paid physical forward contract [¶3, lines 1-7] and Figure 1 (Prior Art)), **and whereby the first business entity offers debt securities to investors** ([¶3, lines 7-8] and Figure 1 (Prior Art), "OFFERING"),

It would be obvious for someone skilled in the art at the time of the invention to combine the prior teaching as disclosed by the applicant with the swap agreement of commodities, as disclosed by Dines et al. One skilled in the art would be so inclined to combine the two since Dines et al. would allow the special purpose vehicle of the applicant's disclosed system the ability to reduce its vulnerability to price risks that can cut into profits, and would allow the

purchaser the ability to attract more producers and resellers, and benefits from greater certainty with respect to supply quantity.

As per claim 2, the rejection of claim 1 has been addressed.
Dines et al. does not teach the method **wherein the first business entity is a special purpose vehicle owned by the company.**

The applicant's background of invention teaches a method **wherein the first business entity is a special purpose vehicle owned by the company** (special purpose vehicle, SPV, [¶3, lines 1-7] and Figure 1 (Prior Art), element 12).

It would be obvious for someone skilled in the art at the time of the invention to combine the prior teaching as disclosed by the applicant with the swap agreement of commodities, as disclosed by Dines et al. One skilled in the art would be so inclined to combine the two since a special purpose vehicle would allow the parent entity, the company, benefits including tax advantages, bankruptcy remoteness, asset insulation and reduced liability.

As per claim 3, the rejection of claim 1 has been addressed.
Dines et al. teaches the method **wherein the fixed price that the party is obligated to pay the purchaser pursuant to the swap agreement equals the price at which the purchaser is obligated to pay the first business entity**

pursuant to the purchase agreement (A seller (in this case the applicants "purchaser") may resell the commodity to another buyer (in this case the party) [¶19, lines 6-8]. The price for a quantity of the commodity can have a premium or discount [¶16, lines 1-3] which may be equal to the observed price [¶16, lines 3-6]. Therefore, the second business entity can pay the purchaser the same price that the purchaser pays the second business entity if no premium is paid by the purchaser or first business entity.).

As per claim 4, the rejection of claim 1 has been addressed.

Dines et al. teaches the method **wherein the party with whom the purchaser enters the swap agreement is the company** (confidentiality of the contacts preserves the identities of the parties involved [¶29, lines 1-9] even within a commodity supplier [¶29, lines 9-12]. Therefore, the purchaser, which can be a derivatives hedging products (DHP) supplier could enter into a swap agreement with a division of the same company with acts as a reseller service company [¶47, lines 6-11], and maintain a separate fiscal identity.).

As per claim 5, the rejection of claim 1 has been addressed.

Dines et al. teaches the method **wherein the party with whom the purchaser enters the swap agreement is a third party unrelated to the company** ([¶47, lines 6-11], where the purchaser, which can be a derivatives hedging products

(DHP) supplier could enter into a swap a reseller service company, which is unrelated to the supplying company.).

As per claim 15, All of the limits of Claim 15 have been previously addressed in Claim 1 and is therefore rejected using the same prior art and rationale.

As per claim 16, the rejection of claim 15 has been addressed.
All of the limits of Claim 16 have been previously addressed in Claim 2 and is therefore rejected using the same prior art and rationale.

As per claim 17, the rejection of claim 15 has been addressed.
All of the limits of Claim 17 have been previously addressed in Claim 3 and is therefore rejected using the same prior art and rationale.

As per claim 18, the rejection of claim 15 has been addressed.
All of the limits of Claim 18 have been previously addressed in Claim 4 and is therefore rejected using the same prior art and rationale.

As per claim 19, the rejection of claim 15 has been addressed.
All of the limits of Claim 19 have been previously addressed in Claim 5 and is therefore rejected using the same prior art and rationale.

7. Claims 6, 7, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dines et al. (U.S. Application No. 09/862992) in view of the applicant's background of invention (Kumar et al., U.S. Application No. 10/693277, "BACKGROUND OF INVENTION" section and Figure 1, labeled prior art.) in view of Miri et al. (U.S. Application No. 10/942196).

As per claim 6, the rejection of claim 1 has been addressed.

Dines et al. and the applicant's background of invention do not teach the method **wherein the arrangement further obligates a second business entity to supply volumes of the commodity to the first business entity pursuant to a contingent supply agreement if the company fails to deliver the necessary volumes of the commodity required by the forward contract.**

Miri et al. teaches the method **wherein the arrangement further obligates a second business entity to supply volumes of the commodity to the first business entity pursuant to a contingent supply agreement if the company fails to deliver the necessary volumes of the commodity required by the forward contract** (Figure 3, shows a parent company with subsidiaries, who deliver a commodity, gas or power, according to master agreements [¶32-34]. The master agreements link all underlying commodity-trading obligations in a transaction to a single contract which may be terminated in the case of default [¶28], where it is understood that the commodity-trading obligations in a

transaction would require one, or as Figure 3 shows a group of parties, to supply volumes of a commodity, and another party to purchase a set amount of the commodity.).

It would be obvious for someone skilled in the art at the time of the invention to combine the master agreement of Miri et al. with the teaching of Dines et al and the background of the applicant, to achieve a contingent supply agreement if the company fails to deliver the necessary volumes of the commodity required by the forward contract. One skilled in the art would be so inclined to combine the two to reduce possible default of the special purpose vehicle (first business entity), and thus increase the probably of success of the contractual agreement between the first business entity and the purchaser.

As per claim 7, the rejection of claim 6 has been addressed.
Dines et al. and the applicant's background of invention do not teach the method **wherein the second business entity is a parent of the company.**

Miri et al. teaches the method **wherein the second business entity is a parent of the company** ((Figure 3, shows a parent company with subsidiaries, who deliver a commodity, gas or power, according to master agreements [¶32-34]. The master agreements link all underlying commodity-trading obligations in a transaction to a single contract which may be terminated in the case of default

[¶28], where it is understood that the commodity-trading obligations in a transaction would require one, or as Figure 3 shows a group of parties, to supply volumes of a commodity, and another party to purchase a set amount of the commodity.).

It would be obvious for someone skilled in the art at the time of the invention to combine the master agreement of Miri et al. with the teaching of Dines et al and the background of the applicant, to achieve a contingent supply agreement if the company fails to deliver the necessary volumes of the commodity required by the forward contract. One skilled in the art would be so inclined to combine the two to reduce possible default of the special purpose vehicle (first business entity), and thus increase the probably of success of the contractual agreement between the first business entity and the purchaser.

As per claim 20, the rejection of claim 15 has been addressed.
All of the limits of Claim 20 have been previously addressed in Claim 6 and is therefore rejected using the same prior art and rationale.

As per claim 21, the rejection of claim 20 has been addressed.
All of the limits of Claim 21 have been previously addressed in Claim 7 and is therefore rejected using the same prior art and rationale.

8. Claims 8, 9, 11-14, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dines et al. (U.S. Application No. 09/862992) in view of the applicant's background of invention (Kumar et al., U.S. Application No. 10/693277, "BACKGROUND OF INVENTION" section and Figure 1, labeled prior art.) in view of Miri et al. (U.S. Application No. 10/942196) in view of Perry et al. (U.S. Application No. 10/764126).

As per claim 8, the rejection of claim 7 has been addressed.
Dines et al., the applicant's background of invention, and Miri et al. do not teach the method **wherein the purchase agreement between the purchaser and the first business entity permits the purchaser to terminate the purchase agreement when the company defaults on the swap agreement.**

Perry et al. teaches the method **wherein the purchase agreement between the purchaser and the first business entity permits the purchaser to terminate the purchase agreement when the company defaults on the swap agreement.** ("In the event of a default the system authority has the ability to either terminate a swap" ([Abstract, lines 7-8], also see [¶42]).

It would be obvious for someone skilled in the art at the time of the invention to combine the invention of Perry et al. with the teaching of Dines et al., the applicant's background of invention, and Miri et al., to purchase agreement

between the purchaser and the first business entity permits the purchaser to terminate the purchase agreement when the company defaults on the swap agreement. One skilled in the art would be so inclined to combine the two to mitigate the risk to both the purchaser and first business entity by providing a system for transferring the risk of performance and payments under a physical contract during delivery and to assure that payments are made on an ongoing basis and security is maintained so that exposure of the parties to default by the other party is reduced commensurate with performance.

As per claim 9, the rejection of claim 8 has been addressed.

Dines et al., the applicant's background of invention, and Miri et al. do not teach the method **wherein the purchase agreement between the purchaser and the first business entity permits the purchaser to terminate the purchase agreement when the default of the company under the swap agreement exceeds a threshold amount specified in the contingent supply agreement.**

Perry et al. teaches the method **wherein the purchase agreement between the purchaser and the first business entity permits the purchaser to terminate the purchase agreement when the default of the company under the swap agreement exceeds a threshold amount specified in the contingent supply agreement.** ("A commodity swap may be terminated by the System, either upon the occurrence of a Termination Event [¶30, lines 11-14], where a termination

event could include any agreed upon event made by the participants [¶30, lines 14-20]).

It would be obvious for someone skilled in the art at the time of the invention to combine the invention of Perry et al. with the teaching of Dines et al., the applicant's background of invention, and Miri et al., to purchase agreement between the purchaser and the first business entity permits the purchaser to terminate the purchase agreement when the company defaults on the swap agreement. One skilled in the art would be so inclined to combine the two to mitigate the risk to both the purchaser and first business entity by providing a system for transferring the risk of performance and payments under a physical contract during delivery and to assure that payments are made on an ongoing basis and security is maintained so that exposure of the parties to default by the other party is reduced commensurate with performance.

As per claim 11, All of the limits of Claim 11 have been previously addressed in Claims 1, 4, 6, 7, and 8, and is therefore rejected using the same prior art and rationale.

As per claim 12, the rejection of claim 11 has been addressed.
All of the limits of Claim 12 have been previously addressed in Claim 9 and is therefore rejected using the same prior art and rationale.

As per claim 13, the rejection of claim 11 has been addressed.
All of the limits of Claim 13 have been previously addressed in Claim 3 and is therefore rejected using the same prior art and rationale.

As per claim 14, the rejection of claim 11 has been addressed.
All of the limits of Claim 14 have been previously addressed in Claim 2 and is therefore rejected using the same prior art and rationale.

As per claim 22, the rejection of claim 21 has been addressed.
All of the limits of Claim 21 have been previously addressed in Claim 8 and is therefore rejected using the same prior art and rationale.

As per claim 23, the rejection of claim 22 has been addressed.
All of the limits of Claim 21 have been previously addressed in Claim 9 and is therefore rejected using the same prior art and rationale.

9. Claims 10 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dines et al. (U.S. Application No. 09/862992) in view of the applicant's background of invention (Kumar et al., U.S. Application No. 10/693277, "BACKGROUND OF INVENTION" section and Figure 1, labeled prior art.) in

view of Miri et al. (U.S. Application No. 10/942196) in view of Ford (U.S. Patent No. 6862580).

As per claim 10, the rejection of claim 6 has been addressed.
Dines et al., the applicant's background of invention, and Miri et al. do not teach the method **wherein the second business entity is unrelated to the company.**

Ford teaches the method **wherein the second business entity is unrelated to the company** (Figures 3a and 3b, element 24 (Alternative Source) and [column 5, lines 30-40]).

It would be obvious for someone skilled in the art at the time of the invention to combine the master agreement of Miri et al. with the teaching of Dines et al., the applicant's background of invention, and Miri et al., to achieve a contingent supply agreement if the company fails to deliver the necessary volumes of the commodity required by the forward contract with an alternative source not related to the company. One skilled in the art would be so inclined to combine the two to reduce possible default of the special purpose vehicle (first business entity), and thus increase the probably of success of the contractual agreement between the first business entity and the purchaser, and at the same time increase profitably

of the special purpose vehicle, and thus the company, by using a less expensive supplier of the commodity.

As per claim 24, the rejection of claim 20 has been addressed.

All of the limits of Claim 21 have been previously addressed in Claim 10 and is therefore rejected using the same prior art and rationale.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Barnett (US Application: 10/239773) - teaches the use of a special purpose vehicle as debt instruments backed by an asset or pool of assets in which the principal and interest is paid from the cash flow generated by the assets
- Canezin et al. (US Application: 10/404517) – teaches a financial investment product that allows an investor to take leveraged exposure to a customized, dynamic pool of credits and earn an enhanced yield. The product consists of a special purpose vehicle, such as a trust, containing one or more underlying assets and a portfolio of diversified credit default swaps. The notional of the outstanding portfolio of default swaps is a multiple of the notional of securities issued by the trust, which creates the leverage. The leverage is non-recourse to the investor and can be either increased or decreased during the life of the trade

- Greenshields et al. (US Application: 10/672448) – teaches bond holder, a SPV, a trust, and a commodity (electricity).
- Marshall (US Application: 09/977813) – teaches the use of a trust (SPV), forward contract, bonds,
- Trenk et al. (US Application: 09/760576) – teaches the use of a special purpose entity and swap agreement to provide a company with underperforming assets the ability to sell these assets to a trading house, which in turn uses a financial institution and investors to fund the transactions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pollock whose telephone number is 571 270-1465. The examiner can normally be reached on 7:30 AM - 6 PM, Mon-Thu Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thu Nguyen can be reached on 571 272-6967. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GAP

2/24/2008

/Gregory Pollock/
Examiner, Art Unit 4182

Gregory A. Pollock

/Thu Nguyen/
Supervisory Patent Examiner, Art Unit 4182